Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

To show that the plaintiff had notice of the danger, the defendant offered evidence of a conversation with respect to the defect, within twenty yards of the plaintiff. The court below excluded the evidence, because it was not satisfied that the plaintiff heard the conversation. *Held*, that whether the plaintiff heard the conversation was a question of fact for the court. *Gila Valley, G. & N. Ry. Co.* v. *Hall* (U. S. Sup. Ct., Case No. 68, Jan. 5, 1914).

Where a rule of evidence excludes logically probative matter unless it has satisfied certain prescribed tests, there is a preliminary question of fact for the court, whether these requirements have been complied with. *Boyle* v. *Wiseman*, 11 Ex. 360; *Comm.* v. *Brewer*, 164 Mass. 577, 42 N. E. 92. This principle should not be relaxed because of the fortuitous circumstance that the fact which is presented for the court's decision happens to be the precise issue upon which the jury is to pass. *Doe d. Jenkins* v. *Davies*, 10 Q. B. 314; *State* v. *Lee*, 127 La. 1077, 54 So. 356. *Contra*, *Respub.* v. *Hevice*, 3 Wheeler's Cr. Cas. (Pa.) 505. The weight to be given such evidence, of course, lies with the jury. *Welstead* v. *Levy*, 1 M. & Rob. 138; *Comm.* v. *Brewer*, *supra*. But the admission of the evidence rejected in the principal case would contravene no general rule of exclusion. The conversation regarding the defect is offered as the secondary link in a chain of circumstantial proof. The court requires, as a condition precedent to its admission, that the primary link — the fact that the plaintiff heard the conversation — be proved to the satisfaction of the judge. It is submitted, with deference, that the application of such a test is a usurpation of the jury's function. The secondary matter should come in, provided evidence is offered in support of the primary proposition, from which the jury, as reasonable men, could find the connection which the proponent of the evidence seeks to establish. *Stowe* v. *Querner*, L. R. 5 Ex. 155; *Comm.* v. *Robinson*, 146 Mass. 571, 16 N. E. 452.

MUNICIPAL CORPORATIONS — FRANCHISES AND LICENSES — MODIFICATION ALLOWING INCREASE IN RATES. — A municipality was empowered to award franchises only to the best bidder after due advertisement. Having awarded a franchise to a telephone company upon its agreement to furnish service to subscribers at a given rate, it subsequently relieved the company of this stipulation, allowing it to charge increased rates. *Held*, that the modification is valid. *Lutes* v. *Fayette Home Telephone Co.*, 160 S. W. 179 (Ky.).

Where a party, as sole beneficiary of a contract, is vested with direct rights against the promisor, he cannot be deprived of these rights by any agreement between the contracting parties. *Henderson* v. *McDonald*, 84 Ind. 149. See WALD'S POLLOCK ON CONTRACTS, 3 ed., 273. But such rights will not vest unless the parties to the contract so intend. *House* v. *Houston Waterworks Co.*, 88 Tex. 233, 31 S. W. 179. In the principal case, the municipality clearly intended to secure benefits for its citizens. However, aside from any question of rights in the franchise contract, the citizens have direct rights against the promisor to compel performance of its common law obligation as a public-service company. *Webster* v. *Nebraska Telephone Co.*, 17 Neb. 126, 22 N. W. 237. It would seem reasonable to suppose that the municipality intended merely to create a public-service company against which the citizens would have such rights, but to remain itself *dominus* of the contract. In such a case, the right of the municipality to agree with the co-contractor on alterations cannot be denied. *Meech* v. *City of Buffalo*, 29 N. Y. 198. However, so material an alteration as was here made would seem in effect the granting of a new franchise. By its charter the city was required to award franchises only after due advertisement and to the highest bidder. Unless, therefore, the defendant would probably have been the only bidder for a new franchise, so that advertisement would have been a mere matter of form (*City of Hartford* v. *Hartford Electric Light Co.*, 65 Conn. 324, 32 Atl. 925), the decision would seem incorrect.

PERSONS — RIGHT TO DOWER — SECRET ANTE-NUPTIAL CONVEYANCE. — A widower, before a second marriage, made a voluntary conveyance of land to an adult daughter by his former wife, without the knowledge of his fiancée. *Held*, that the second wife may claim dower in the land conveyed. *Deke* v. *Huenkemeier*, 260 Ill. 131, 102 N. E. 1059; *McAulay* v. *McAulay*, 79 S. E. 785 (S. C.).

For a discussion of the principles involved, see NOTES, p. 474.

PHYSICIANS AND SURGEONS — SURGEON'S LIABILITY FOR NEGLIGENCE OF HOSPITAL NURSE AFTER OPERATION. — A nurse attached to the hospital in which the defendant had operated on the plaintiff, negligently failed to remove a gauze drain. The plaintiff sues the defendant surgeon. *Held*, the surgeon is not responsible. *Hunner* v. *Stevenson*, 46 Chi. Leg. N. 163 (Md.).

A specialist is not an absolute insurer. He is held to that degree of skill and knowledge ordinarily possessed by physicians in similar localities who have devoted special study to the disease, having regard to the existing state of scientific knowledge. *Baker* v. *Hancock*, 29 Ind. App. 456, 63 N. E. 323. The position of a specialist who attends a hospital only to operate is that of independent contractor. *Harris* v. *Fall*, 177 Fed. 79, 85. During an operation he is in control. *Hillyer* v. *St. Bartholomew's Hospital*, [1909] 2 K. B. 820. For the negligence of the attendants while under his direction he should be responsible. *Jones* v. *Scullard*, [1898] 2 Q. B. 565; *Wyllie* v. *Palmer*, 137 N. Y. 248, 33 N. E. 381. Moreover, if by reason of his unique knowledge he ought to know that some unusual treatment would be advisable, his failure to have it applied would seem to be a breach of that duty of care up to which he is held. After the operation the care of the patient devolves on the hospital only. *Harris* v. *Fall*, *supra*; *Baker* v. *Wentworth*, 155 Mass. 338, 29 N. E. 589. The principal case is in accord with this view. But even after the operation, if the specialist ought to know that extraordinary measures would be expedient, it seems that he should be responsible for injuries resulting from his failure so to direct.

RES JUDICATA — PERSONS CONCLUDED — CO-DEFENDANTS: DECREE IN FAVOR OF ONE CO-DEFENDANT AS CONCLUSIVE IN LATER SUIT BY OTHER CO-DEFENDANT. — In a former suit a debtor and three co-sureties had been sued together. Two of the sureties were there found not liable and the third paid the whole debt. To a suit by the latter for contribution, the two former pleaded the previous suit as a bar. *Held*, that the question of their original liability was not *res judicata*. *Central Banking & Security Co.* v. *United States Fidelity & Guaranty Co.*, 80 S. E. 121 (W. Va.).

The principles of *res judicata* are applied in two classes of cases. See *Cromwell* v. *County of Sac*, 94 U. S. 351, 352. In one class, the courts refuse to allow the same cause of action to be litigated again. *Young* v. *Farwell*, 165 N. Y. 341, 59 N. E. 143. But the doctrine of *res judicata* also includes the rule that any material point actually decided in one suit cannot be re-litigated where the same parties are opposed to each other in both suits. *Wright* v. *Griffey*, 147 Ill. 496, 35 N. E. 732; *Lynch* v. *Swanton*, 53 Me. 100. There seems no reason for a different rule when the parties were co-defendants in the first suit, if, as in the case of co-sureties, the judgment in favor of one defendant could have been appealed against by the losing co-defendant on the ground that his own liability was thereby increased. *Ruff* v. *Montgomery*, 83 Miss. 185, 36 So. 67. Policy requires that a question once judicially passed upon be final as to all parties who had an opportunity to litigate that question. In the principal case it is necessary for the plaintiff to prove that he and the defendants were liable as co-sureties. *Bulkeley* v. *House*, 62 Conn. 459, 26 Atl. 352. *Robinson* v. *Boyd*, 60 Oh. St. 57, 53 N. E. 494. If the former case had decided they were co-sureties, this finding would be evidence in the suit for